

IBERVILLE PARISH SCHOOL BOARD



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ADVISORY SERVICES REPORT  
ISSUED OCTOBER 18, 2006

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**LEGISLATIVE AUDITOR  
1600 NORTH THIRD STREET  
POST OFFICE BOX 94397  
BATON ROUGE, LOUISIANA 70804-9397**

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STEVE J. THERIOT, CPA  
LEGISLATIVE AUDITOR

OFFICE OF  
**LEGISLATIVE AUDITOR**  
STATE OF LOUISIANA  
BATON ROUGE, LOUISIANA 70804-9397

1600 NORTH THIRD STREET  
POST OFFICE BOX 94397  
TELEPHONE: (225) 339-3800  
FACSIMILE: (225) 339-3870

October 18, 2006

**DR. MARTIN BERA, SUPERINTENDENT,  
AND MEMBERS OF THE IBERVILLE  
PARISH SCHOOL BOARD**

Plaquemine, Louisiana

We received an allegation that the Iberville Parish School Board (school board) failed to comply with the Louisiana public bid law relating to the replacement of the air conditioning system at Dorseyville Elementary School. In addition, we received certain information relating to the school board's performance-based energy efficiency contract.

Attachment I provides our detailed findings and recommendations resulting from our assessment of the procedures and practices of the school board and administration (management). We have also attached an *Executive Summary*, which contains our findings in a more condensed format. The response from management of the school board is presented in Appendix A.

Our recommendations are intended to improve controls over contracts, provide advice in implementing good business practices, and ensure compliance with applicable state laws. However, management should consider the costs of implementing our recommendations compared to the benefits they will provide. This assessment is substantially less in scope than an audit conducted in accordance with generally accepted auditing standards; therefore, we are not offering an opinion on the school board's financial statements or system of internal control nor assurance as to compliance with laws and regulations.

Respectfully submitted,

Steve J. Theriot, CPA  
Legislative Auditor

RLT:ESS:JSI:dl

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In December 2002, subsequent to a formal request for proposals process, the Iberville Parish School Board (school board) entered into a 10-year \$3.5 million performance-based energy efficiency contract (contract) with Siemens Building Technologies, Inc. (Siemens). The contract, among other things, included retrofitting lighting at all facilities, installing an energy management computer system throughout the district, replacing/retrofitting/adding mechanical equipment at certain schools to provide more efficient and reliable HVAC (heating, ventilation, and air conditioning) systems, and providing technical support services over the 10-year term. The project construction was completed in December 2003.

Such a contract appears attractive because state law effectively requires that it result in no cost to the public entity. State law requires the school board's payment obligations for the contractor's equipment and services each year to be less than the annual energy cost savings guaranteed by the contractor (Siemens, in this case). The contract is required to contain a guarantee of energy cost savings to the school board for which the annual calculation must include energy savings and maintenance/operational savings. Operational savings result from operation expenses eliminated and future capital replacement expenditures avoided as a result of equipment installed or services performed by the contractor.

1. In April 2006, the school board awarded a project costing approximately \$1.2 million for the replacement of the air conditioning system at Dorseyville Elementary School without seeking competitive bids/prices.

Rather than providing an open and competitive atmosphere in awarding the Dorseyville project as required by state law, the school board authorized the superintendent to execute a \$1.2 million amendment to its existing \$3.5 million performance-based energy efficiency contract with Siemens. Without an open process, the school board cannot be assured that it has received the most favorable prices. Also, this air conditioning project appears to be outside the scope of the 2002 contract as we did not find a provision in the contract that contemplates or provides for such work.

#### **Additional Comments Relating to Management's Response**

We acknowledge that Siemens included the Dorseyville work in its proposal to the school board and the proposal is attached to the contract as an appendix; however, this work was not a part of the scope of work under the \$3.5 million contract. We did not find convincing evidence in the contract that it was the intent of both parties to amend the contract at a later date to implement the Dorseyville project.

Furthermore, we maintain that the Dorseyville project does not qualify to be a performance-based energy efficiency contract because it does not produce a guaranteed energy savings to the school board as required by law. Therefore, this project should have been separately bid under the requirements of the Public Bid Law.

2. The performance-based energy efficiency contract and the amendment for the Dorseyville project appear to be contrary to state law.
- Both the contract and amendment fail to provide the school board with a guarantee of the operational savings, and the amendment also fails to provide a guarantee of the energy savings as follows:

	(+) Total December 2002 10-year Contract	(+) Total April 2006 12-year Amendment	(=) Grand Total Savings	(-) Total Guaranteed Savings	(=) Total Stipulated Savings Not Guaranteed
1. Energy savings	\$2,136,270	\$22,800	\$2,159,070	\$2,136,270	\$22,800
2. Operational savings	1,953,510	1,419,202	3,372,712		3,372,712
Total energy savings	<u>\$4,089,780</u>	<u>\$1,442,002</u>	<u>\$5,531,782</u>	<u>\$2,136,270</u>	<u>\$3,395,512</u>
				38.6%	61.4%

Although the school board received capital assets under the contract and amendment, the total guaranteed savings of approximately \$2.1 million is not sufficient to “cover” the school board’s approximate \$4.7 million payment obligation (\$3.5 million original contract + \$1.2 million amendment).

**Additional Comments Relating to Management’s Response**

Although the contract and amendment contain certain language and schedules that reflect a total guaranteed savings of approximately \$5.5 million to the school board, approximately \$3.4 million (or 61.4%) of the savings is stipulated and not actually being guaranteed by Siemens.

The annual stipulated savings in the contract and amendment have been agreed to by both parties (Siemens and school board) as being achieved upon the execution (“front-end”) of the contract/amendment. Siemens is not required to measure or verify the achievement of these substantial stipulated savings each year nor is Siemens responsible for paying the school board an amount equal to the deficiency should the annual stipulated savings not be achieved. Therefore, it is clear that the majority of savings enumerated in the contract and amendment is not actually being guaranteed by Siemens.

In addition, we are not convinced that the language in the Dorseyville amendment provides the school board with a guarantee of the \$22,800 of energy savings. We asked (in June 2006) a Siemens representative to the school board and were told that it is not guaranteed. Now, management’s response and another Siemens representative have assured us (in October 2006) that the energy savings will be guaranteed. Regardless of the conflicting statements over the \$22,800, there is still approximately \$3.4 million not being guaranteed (measured and verified) by Siemens.

- The school board’s payment obligations in 2004 and 2005 exceeded the guaranteed annual savings by \$144,034 and \$126,858, respectively, as follows:

Year	School Board's Payment Obligations					
	(+)	(+)	(+)	(=)	(-)	(=)
	Debt Principal	Debt Interest	Technical Support	Total Payment Obligation	Siemens Guaranteed Savings	School Board's "Excess" Payments
2004	\$205,000	\$66,155	\$86,506	\$357,661	\$213,627	\$144,034
2005	215,000	37,249	88,236	340,485	213,627	126,858
Total	\$420,000	\$103,404	\$174,742	\$698,146	\$427,254	\$270,892

Furthermore, because Siemens is not guaranteeing any savings under the 2006 Dorseyville project/amendment, the entire \$1.2 million payment obligation (plus interest) will be considered “excess” payments, contrary to state law.

- Management does not maintain documentation supporting the calculation of the operational savings amounts stipulated in the performance-based energy efficiency contract. In addition, management does not have a clear understanding of what specifically comprises the operational savings or how it was derived.
- Management failed to implement checks and balances over the performance-based energy efficiency contract as follows:
  - The energy savings of the school district as reported by Siemens has not been independently verified or monitored in-house by management.
  - Management was unaware that actual energy savings for the 2004 year, as reported by Siemens, was \$5,790 less than the annual guaranteed savings in the contract. The contract provides that in the event the annual energy savings is not achieved, Siemens will pay the school board the deficiency amount within 60 days of the report. Management was unaware of Siemens paying such deficiency to the school board.

**Additional Comments Relating to Management’s Response**

Although we were informed that the contract allows energy savings from the 2003 construction period to be carried forward to offset the deficiency in the 2004 year, state law does not provide for such a carry forward of savings. Louisiana Revised Statute 33:4547.1.B. requires the school board’s annual payment obligation to be less than the annual energy savings.

- Management was not certain whether all contract deliverables were received. The contract includes a “Technical Support Program,” which provides Siemens a fee of \$947,214 (\$86,506 per year escalated at 2% per year) over the 10-year period for monitoring the energy and cost savings of the school district. As part of this program, Siemens is required to perform monthly energy audits and prepare quarterly reports on energy savings. Management could not provide us with any such reports.
- The legal advisor of the school board did not review the 2002 performance-based energy efficiency contract prior to execution.

## Findings and Recommendations

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The following is background information and the findings and recommendations resulting from our advisory services. The recommendations are presented to improve controls over contracts, provide advice in implementing good business practices, and ensure compliance with applicable state laws. However, management should consider the costs of implementing these recommendations compared to the benefits they will provide. For those recommendations not implemented, management should be aware of the risks of not implementing such controls.

Management's response to the findings and recommendations is included in Appendix A.

### **Background Information**

Louisiana Revised Statute (R.S.) 33:4547.1.A. provides that any political subdivision may enter into a performance-based energy efficiency contract (contract) for services and equipment. R.S. 33:4547.3 requires the contract to contain a guarantee of energy savings to the school district for which the annual calculation must include maintenance/operational savings that result from operation expenses eliminated and future capital replacement expenditures avoided as a result of equipment installed or services performed by the contractor.

The school district's payment obligation for each year of the contract is required to be less than the annual savings guaranteed by the contractor. R.S. 33:4547.1.B. requires the payment obligation to be either:

- (1) set as a percentage of the annual energy cost savings attributable to the services or equipment under the contract; or
- (2) guaranteed by the contractor to be less than the annual energy cost savings attributable to the services or equipment under the contract.

R.S. 33:4547.1.A. provides that such contract is exempt from the provisions of the Louisiana Public Bid Law (R.S. 38:2212) as it is considered a contract for services. However, in seeking a contractor, R.S. 33:4547.2 requires the school board to implement a defined request for proposals process.

- In April 2002, the school board approved soliciting requests for proposals for the implementation of energy equipment and maintenance and training services in all its facilities.
- In December 2002, the school board entered into a 10-year \$3.5 million (\$2,567,811 project + \$947,214 technical support services) performance-based energy efficiency contract with Siemens. The contract, among other things, included retrofitting lighting at all facilities, installing an energy management computer system throughout the district, replacing/retrofitting/adding mechanical equipment at certain schools to provide more efficient and reliable HVAC (heating, ventilation, and air conditioning) systems, and providing technical support services.

- The project construction was completed in December 2003.

### **Competitive Bidding**

In April 2006, the school board awarded a project costing approximately \$1.2 million for the replacement of the air conditioning system at Dorseyville Elementary School without seeking competitive bids/prices. The school board has a fiduciary and legal responsibility to ensure that an open and competitive atmosphere is always provided when contracting out work of the school district. Without an open process, the school board cannot be assured that it has received the most favorable prices.

At the March 13, 2006, school board meeting, a motion failed that was in favor of the solicitation of bids for this project. Instead, the school board authorized the superintendent to execute an amendment to its existing \$3.5 million performance-based energy efficiency contract (contract) with Siemens Building Technologies, Inc. (Siemens). Although this air conditioning project (convert existing system to a central chill water plant with fan coil units and electric reheat) at Dorseyville was contemplated in the May 2002 proposal by Siemens, it was excluded from the contract awarded them in December 2002. The superintendent told us the Dorseyville project was not put out for public bid because it is considered the “second phase” of the Siemens contract. The superintendent told us that this position is supported by the school board’s legal advisor whom he said had consulted with the Louisiana Attorney General’s Office (AG). We were also informed that the project will start in August 2006.

We did not find a provision in the contract that contemplates or provides for such a “second phase” project. In addition, by the school board “piggy-backing” a significant (\$1.2 million or approximately 34% of the original \$3.5 million contract) amendment to the Siemens contract, we expect the Dorseyville project to also generate a guaranteed energy savings (required by R.S. 33:4547.3.A.) to the school board and become an integral part of the terms and conditions, including the cash flows, of the Siemens contract. However, this is apparently not the case. A Siemens representative to the school board told us that the amendment will be treated separate from the terms and conditions of the contract. We were informed that the amendment will not have any effect on the guaranteed energy savings in the contract and that the savings generated by the Dorseyville project will not be guaranteed by Siemens.

Also, it is reasonable to expect that this Dorseyville project would result in a sizeable energy savings to qualify as a part of the existing contract. Over the 12-year term of the approximate \$1.2 million project/amendment, the gross savings totals approximately \$1,442,002 and is comprised of \$22,800 (\$1,900 each year or 1.6%) in energy cost savings and \$1,419,202 (\$118,267 average each year or 98.4%) in operational savings. While the project appears to generate both an energy and operational cost savings, it is clear that the replacement of the air conditioning system at Dorseyville has very little to do with saving energy (i.e., only \$1,900 of energy savings each year).

The air conditioning project at Dorseyville Elementary School appears to be outside the scope of the 2002 contract. Although there was verbal discussion about this project with an attorney in the AG’s office, we recommend the school board request a formal legal opinion as to

whether this \$1.2 million project should have been competitively bid under state law. In the future, the school board should always ensure that it provides an open and competitive atmosphere when contracting out work of the school district.

**Contract**

The performance-based energy efficiency contract and the amendment for the Dorseyville project appear to be contrary to state law. Both the contract and amendment fail to provide the school board with a guarantee of the operational savings, and the amendment fails to provide a guarantee of the energy savings. Also, the school board’s payment obligations in 2004 and 2005 exceeded the guaranteed annual savings. R.S. 33:4547.3.B. requires that the calculation of the annual guaranteed energy savings include maintenance/operational savings which result from operation expenses eliminated and future capital replacement expenditures avoided as a result of equipment installed or services performed by the contractor. R.S. 33:4547.1.B. requires the school district’s payment obligation for each year of the contract to be less than the guaranteed annual savings. The AG has opined (No. 99-280) that the provisions of state law require maintenance/operational savings and energy savings to be factored into the contract in calculating an entity’s payment obligation.

The contract was negotiated in 2002 by a previous administration and the 2006 amendment was negotiated by the present administration/school board. The following is a summary of the total negotiated savings amounts:

	(+) Total December 2002 10-year Contract	(+) Total April 2006 12-year Amendment	(=) Grand Total Savings	(-) Total Guaranteed Savings	(=) Total Stipulated Savings Not Guaranteed
1. Energy savings	\$2,136,270	\$22,800	\$2,159,070	\$2,136,270	\$22,800
2. Operational savings	<u>1,953,510</u>	<u>1,419,202</u>	<u>3,372,712</u>	<u>                    </u>	<u>3,372,712</u>
Total energy savings	<u>\$4,089,780</u>	<u>\$1,442,002</u>	<u>\$5,531,782</u>	<u>\$2,136,270</u>	<u>\$3,395,512</u>
				38.6%	61.4%

Although the contract and amendment both provide for annual energy savings and operational savings to the school district, none of the approximately \$3.4 million of operational savings is actually guaranteed by Siemens as required by state law. In addition, none of the energy savings under the amendment is guaranteed.

1. Under the contract, the energy savings of \$2,136,270 (\$213,627 annually x 10 years) is measured and guaranteed by Siemens; however, the energy savings of \$22,800 (\$1,900 annually x 12 years) provided under the amendment is not guaranteed. The contract provides that in the event the annual energy savings is not achieved, Siemens is responsible for paying the school board an amount equal

to the deficiency. The amendment does not include such a provision of guarantee by Siemens.

2. Although the approximate \$3.4 million of operational savings is included in the calculation of the total energy savings of the school district, it is not actually being guaranteed by Siemens. According to the contract and amendment, operational savings represents amounts that have been “stipulated” and agreed to by both parties (school board and Siemens) as being achieved upon execution of the contract/amendment. There is no requirement that Siemens guarantee or even verify whether these stipulated operational savings amounts are being achieved during the terms of the contract and amendment.

We find no benefit to the school board for entering into a performance-based energy efficiency contract (including the amendment) that fails to require the contractor to guarantee the operational savings, a significant savings component which is specifically required by state law. Although the school board received capital assets under the contract and amendment, the total guaranteed savings of approximately \$2.1 million is not sufficient to cover the school board’s approximate \$4.7 million payment obligation (\$3.5 million contract + \$1.2 million amendment).

We determined that the school district’s payment obligations in both 2004 and 2005 were not less than the annual guaranteed energy savings under the contract, as required by state law (R.S. 33:4547.1.B.). According to our analysis below, the school board’s payment obligations in 2004 and 2005 exceeded the guaranteed annual savings under the contract by \$144,034 and \$126,858, respectively:

Year	School Board's Payment Obligations					
	(+)	(+)	(+)	(=)	(-)	(=)
	Debt Principal	Debt Interest	Technical Support	Total Payment Obligation	Siemens Guaranteed Savings	School Board's "Excess" Payments
2004	\$205,000	\$66,155	\$86,506	\$357,661	\$213,627	\$144,034
2005	215,000	37,249	88,236	340,485	213,627	126,858
Total	<u>\$420,000</u>	<u>\$103,404</u>	<u>\$174,742</u>	<u>\$698,146</u>	<u>\$427,254</u>	<u>\$270,892</u>

Furthermore, because Siemens is not guaranteeing any savings under the 2006 Dorseyville project/amendment, the entire \$1.2 million (plus interest) payment obligation will be considered “excess” payments contrary to state law.

We recommend that the school board request a formal legal opinion from the Attorney General as to whether this contract, including the amendment, qualifies as a valid performance-based energy efficiency contract under state law.

## **Contract Documentation and Understanding**

Management does not maintain documentation supporting the calculation of the operational savings amounts stipulated in the performance-based energy efficiency contract and amendment. In addition, management does not have a clear understanding of what specifically comprises the operational savings or how it was derived. Sound business practices require that management (1) obtain a clear understanding of critical financial provisions in contracts and amendments; and (2) maintain all documentation generated and used as a basis for negotiating contracts and amendments for follow-up review and analysis and to determine whether the public entity has received the agreed-upon services for the public monies tendered.

The \$5.5 million total potential energy savings (see finding, “Contract”) to be generated under the Siemens contract and amendment (Dorseyville Elementary School project) appear to be adequate to “cover” the \$4.7 million debt incurred. However, to avoid the diversion of funds from instructional programs and to comply with state law, it is extremely vital that the \$3.4 million of operational savings actually be achieved or guaranteed over the 10-12 year period so that the necessary funds are available to pay the related debt obligations as they become due.

Management has a fiduciary responsibility to apply sound business practices in managing funds of the school board. Because of the significance of the financial impact that these operational savings can have on the operations of the school district, it is disturbing that current management did not obtain sufficient knowledge of what specifically comprises the operational savings component and how it was derived in the contract and in the amendment. Management could not provide us with any documentation or details nor was it aware of whether such operational savings were being achieved.

We recommend that management request documentation from Siemens that supports the calculation of the annual operational savings that is stipulated in the contract and in the addendum to the contract amendment. Management should obtain a clear understanding of this information so it can thoroughly review and analyze for reasonableness and for comparison to actual results and determine whether these operational savings are in fact being achieved.

## **Contract Monitoring and Review**

Management failed to implement checks and balances over the performance-based energy efficiency contract. Good business practices dictate that appropriate checks and balances be implemented to ensure that contract deliverables are received and are in compliance with the terms and conditions of the contract. In addition, sound business judgment dictates that contracts be reviewed by legal counsel before being executed.

The superintendent, business manager, and maintenance supervisor were unaware of the school district’s performance in achieving energy cost savings under the performance-based energy efficiency contract (contract) with Siemens. Although not required by law, the superintendent followed good business practices by executing a monitoring services contract (in March 2004) with a third-party professional engineering firm to monitor/review the energy

savings generated and reported by Siemens in the first year (2004) of the 10-year contract; however, we determined that no such monitoring work has been performed to date. A representative of the engineering firm told us that he has not been provided with reports to review and monitor. As a result, the utility performance of the school district as reported by Siemens has not been independently verified or monitored in-house.

Throughout the 10-year contract, Siemens is required to provide the school board with an annual reimbursement/reconciliation report that contains the energy performance of the school district. According to the contract, Siemens measures and/or calculates the annual energy savings and is responsible for submitting a report to the school board within 60 days of each anniversary of the Performance Commencement Date (January 1, 2004). Under the contract, Siemens guarantees an annual energy savings of \$213,627. The contract provides that in the event this annual energy savings is not achieved, Siemens is responsible for paying the school board an amount equal to the deficiency within 60 days of the annual reconciliation.

Upon our request, management did not have the annual reimbursement/reconciliation reports for the 2004 (first) and 2005 performance years. The superintendent told us that he did not recall receiving the 2004 report and that he was expecting Siemens to present the 2005 report at the next (July 2006) school board meeting. We obtained the 2004 report, from their Siemens representative, which reported an energy savings of \$207,837, which is \$5,790 less than the annual guaranteed savings amount (\$213,627) under the contract. The superintendent was unaware of this deficiency and was unaware of Siemens paying such deficiency to the school board.

Also, management was not certain whether other contract deliverables were received. The contract includes a "Technical Support Program," which provides Siemens a fee of \$947,214 (\$86,506 per year escalated at 2% per year) over the 10-year period for monitoring the energy and cost savings of the school district. As part of this program, Siemens is required to perform monthly energy audits and prepare quarterly reports on energy savings. Management could not provide us with any such reports.

In addition, the legal advisor of the school board told us that he did not review the 2002 energy contract prior to execution. He told us that he had not looked at the contract until recently.

We recommend that management (1) provide the 2004 and 2005 annual energy performance reports to the engineering firm for independent review and verification; (2) seek payment from Siemens for deficiency amounts, if any; (3) assign an employee to perform contract monitoring/oversight to ensure that deliverables (services and reports, et cetera) are received and comply with the terms and conditions of the contract; (4) require that a legal advisor review all contracts before the documents are signed; and (5) develop written policies and procedures for contracting work of the school board, including procedures relating to reviewing, monitoring, and amending contracts.

## Management's Response

We received management's written response along with 11 exhibits. The exhibits, in total, were too voluminous to include in this report; such information is available for review in the Baton Rouge Office of Legislative Auditor.

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*Richard J. Ward, Jr.*  
*District Attorney*  
EIGHTEENTH JUDICIAL DISTRICT

CIVIL ASSISTANT:  
LOUIS W. DELAHAYE

ATTORNEY FOR:  
WEST BATON ROUGE PARISH COUNCIL  
IBERVILLE PARISH SCHOOL BOARD

STATE OF LOUISIANA  
IBERVILLE, WEST BATON ROUGE and POINTE COUPEE

58156 COURT ST.  
PLAQUEMINE, LA 70764  
225-687-8340

FAX: 225-687-1868

September 28, 2006



State of Louisiana  
Office of Legislative Auditor  
Attention: Mr. Steve J. Theriot, CPA, Legislative Auditor  
PO Box 94397  
Baton Rouge, LA 70804-9397

RE: Iberville Parish School Board's  
Performance-Based Energy Efficiency Contract

Dear Mr. Theriot:

This is in response to the Legislative Auditor's Preliminary Draft report of Iberville Parish School Board and its awarding of an energy efficiency contract for Dorseyville Elementary School. This response is intended to answer number 1, 2, 3 and 4 of the Executive Summary, Preliminary Draft Report. It is my understanding that your office has a copy of the 2002 Siemen's contract, therefore I did not provided another copy with this response.

Executive Summary #1

**The 2002 Siemens Performance Based Contract  
Contemplates and Provides for the Dorseyville Amendment**

In March of 2002, the School Board issued Request for Proposals for a district wide energy efficiency contract pursuant to R. S. 33:4547.1 thru 33:4547.3. The School Board received at least four responses to the request for proposals; Siemens, Johnson Controls, Star Services, Inc. of Baton Rouge and Berg Mechanical. The School Board retained Associated Design Group, Inc. of Lafayette to act as the School Board's agent to review the proposals received from a technical and financial standpoint. Associated Design Group, Inc. was part of a selection committee made up of School Board members and School Board Administrative personnel. Associated Design Group, Inc. advised this selection committee regarding the different proposals submitted (technical and financial) but did not have a vote on the committee. The Selection Committee recommended to the School Board that Siemens had the best over all ranking/score after all proposals were evaluated. The School Board authorized the Administration to enter into negotiations with Siemens for a final contract. Star Services, Inc. of Baton Rouge filed suit to enjoin award of the energy efficiency contract to Siemens. Siemens

Mr. Steven J. Theriot  
September 28, 2006  
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intervened in the lawsuit to protect its interest in the contract awarded it by the School Board. On the day the parties were present for the injunction hearing, Star Services, Inc. of Baton Rouge dismissed its lawsuit without argument or a court appearance.

Siemens's proposal included a comprehensive list of energy conservation measures which included the Dorseyville Elementary School heating, ventilation and air conditioning project.

Section 36 (page 29) of the 2002 Siemens contract is entitled "Schedules and Exhibits" and provides as follows:

The following Schedules and Exhibits are attached hereto (or will be, as provided in this Agreement) and are made a part of this Agreement by reference.

Included in Section 36 is Section 36.3 Appendices. Appendix B is Siemens Building Technologies proposal for a Comprehensive Energy and Operational Efficiency Services contract to the School Board. Page 30 of Appendix B lists the energy conservation measures recommended by Siemens for Dorseyville. Page 30 includes the mechanical retrofit of HVAC equipment at Dorseyville. Page 30 is attached hereto as **Exhibit #1**.

The Administration and School Board decided to implement the portions of the project that realized the quickest return on investment and the replacement of the mechanical equipment that was at the end of its useful life and experiencing a high failure rate.

The School Board applied for and received funding from the energy funds sponsored by Louisiana Department of Natural Resources to achieve a lower interest rate on the bonds sold for the financing of the first phase of the Siemens project (2002 contract). The Administration and the School Board realized that the energy efficiency needs of the school system was far greater than the current available funding. Therefore, the 2002 Siemens energy efficiency contract, (page 27, Section 29 & page 42, Schedule D, item 12), contemplates and provides for future modifications and amendments to the contract.

#### Section 29. COMPLETE AGREEMENT

This Agreement, when executed, together with all Schedules attached hereto or to be attached hereto, as provided for by this Agreement shall constitute the entire Agreement between both parties and this Agreement may not be amended, modified, or terminated except by a written

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Agreement signed by the parties hereto. Copy of Section 29 is attached as **Exhibit #2**.

Schedule D, Item 12

All amendments or modification of the terms of this Agreement must be accomplished by written consent of Customer and Contractor, and its Assignee, if any. Copy of Schedule D, Item 12 is attached as **Exhibit #3**.

The contract between the School Board and Siemens is a contract drafted by a committee consisting of representatives of several different energy service companies, Department of Natural Resources, Division of Administration, State Facility Planning, local professional engineers and user agents/end users.

The School Board and Siemens always envisioned modifications and amendments to the contract for additional energy efficient enhancements to the school buildings as funding became available. Contrary to the statement in Executive Summary #1, the 2002 Siemens contract contemplated and included amendment provisions as cited above.

The amendment to the Seimens contract for the Dorseyville project is subject to the same terms and conditions of the 2002 contract Attached as **Exhibit #4** is the Amendment to the 2002 contract and **Exhibit #5** is the Addendum to Amendment. **Exhibit #5** provides for the guaranteed energy saving as required by R. S. 33:4547.1B(2) and specifically states that "**The following is added to the Amendment and made a part thereof in order to comply with R. S. 33:4547.1B(2)**". **Exhibit #5** includes a column for annual energy saving and a separate column for annual operational savings.

R. S. 33:4547.1 thru 33:4547.3 does not mandate an amount or percentage of energy saving relative to the total cost of the project. Further, these statutes do not require a pure energy savings. Annual energy saving cost is defined by the statute to include maintenance savings. Maintenance saving is defined by statute as operational expenses eliminated and future capital replacement expenditures avoided as a result of new equipment installed or services performed by the performance contractor. See **Exhibit #5** for the School Board's maintenance and operational savings for the Dorseyville project. The **Exhibit #5** operational savings were calculated by using operational historical data provided to Siemens by the School Board. Attached as **Exhibit #6** is a spread sheet showing the information and calculations used to determine the operational savings for the Dorseyville project.

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It is clear that the School Board contracted for the mechanical retrofit at Dorseyville but postponed its implementation until funds were available.

Finally, the Dorseyville amendment to the 2002 Siemens contract was presented to and reviewed by the Attorney General's office. The Attorney General agreed that the Dorseyville amendment was a valid amendment to the 2002 performance based energy efficiency contract.

### Executive Summary #2

#### **The 2002 Siemens Contract Guarantees Energy and Operational Savings in the 2002 Contract and the Dorseyville Amendment**

The Siemens contract is a contract entered into after receiving requests for proposals for energy efficient **services** as provided by R. S. 33:4547.1 thru 33:4547.3 and not a contract entered into with the lowest responsible bidder as provided in R. S. 38:2212. The services provided by Siemens under its contract with the School Board included but are not limited to the following:

1. Development engineering of climate control systems for schools
2. Engineering for temperature control systems for schools
3. Equipment acquisitions
4. Construction management
5. Contract administration
6. Energy Management and Control insulation
7. Warranty Services
8. Guaranteed Energy Savings

We respectfully disagree with your conclusion that the performance-based energy contract and the amendment for the Dorseyville project appear to be contrary to state law. You allege that both the contract and amendment fail to provide the School Board with a guarantee of operational savings, and the amendment also fails to provide a guarantee of the energy savings.

Page 4, Section 5.2 of the 2002 Siemens contract entitled Energy and Cost Savings Guarantee provides in part as follows:

Subsequent to the Performance Commencement Date and throughout the Term of this Agreement, Contractor hereby guarantees to the level of Annual Projected Energy and Cost Savings as detailed in **Schedule C (Energy and Cost Savings Guarantee)**. The guarantee shall remain in effect

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for the full term of the performance period or until the payment obligation is satisfied. Schedule C is attached as **Exhibit #7**.

Additionally, Page 5, paragraph two of Section 5.3 of the 2002 Siemens contract entitled Annual Review and Reimbursement/Reconciliation provides in as follows:

In the event the Energy and Cost Savings achieved during such twelve-month period is less than the Guaranteed Energy and Cost Savings during the years the guarantee is in effect, ESCO shall pay to Customer an amount equal to the deficiency, within sixty (60) days of the annual reconciliation.

As further evidence that the School Board contracted for and received the guaranteed energy savings under the 2002 Siemens contract is the Performance Bonds provided in the contract. Page 27, Section 26.1 Bonds provides:

ESCO shall furnish a Performance Bond, executed by a corporate Surety licensed to transact such business in the State in the full amount of the Guaranteed Energy Savings. The expense of this bond shall be borne by the ESCO and the bond submitted to the Customer at the time of contract execution. Such an executed bond is incorporated herein by reference as Exhibit I (Performance Bond). If, at any time, a Surety on such a bond becomes irresponsible or loses his right to do business in the State, another Surety will be required, with ESCO shall furnish to the Customer within ten (10) days after receipt of Notice.

The 2002 Siemens contract complies with and is within the intent of R. S. 33:4547.1 thru 33:4547.3. In addition, the contract itself on Page 27, Section 27. Compliance with Law and Standard Practices requires that:

ESCO shall perform its obligations hereunder in compliance with any and all applicable federal, state, and local laws, rules, and regulations, in accordance with sound engineering and safety practices and in compliance with any and all reasonable rules of Customer relative to the Premises. ESCO shall be responsible for obtaining all governmental permits, consents, and authorizations as may be required to perform its obligations hereunder.

Schedule C, which is referred to above on page 4, is attached as **Exhibit #7**. **Exhibit #7** is a table showing the guaranteed energy saving and guaranteed operational savings the School Board will receive under the 2002 Siemens contract. **Exhibit #8** is a spread sheet showing how operational savings in Schedule C were calculated by using operational historical data provided to Siemens by the School Board. The 2002 Siemens contract in Appendix B, page 38 states that:

The operational savings were derived from budget and expense items given by Mr. Andrew Hargooa and Mr. Joseph Distefano. The operational savings captured for the additional mechanical retrofits are based on the reduced contract amount of the current mechanical service agreement with Berg Mechanical Services. The resulting efficiencies from early replacement and the saving from planning the retrofits in a non-emergency fashion are also not considered here, but will result in tangible and intangible benefits to the district.

Future capitol cost avoidance is included and shown as operational savings in Cash Flow 2 and 3 for the mechanical projects and roofing projects listed. The future capitol cost avoidance portion represents the present value of the capitol costs projected for these retrofit projects.

The School Board and Siemens followed Appendix B, page 38 for the Dorseyville amendment, which is discussed on page 3 with references to **Exhibit #5 & #6**. The Dorseyville amendment, as previously explained, contains a specific listing of both annual energy saving and annual operational saving and a guaranteed saving pursuant to **R. S. 33:4547.1B(2)**.

In our discussion with your office, the auditors questioned the Operational Stipulated Savings in **Exhibit #5** (Dorseyville Contract) and in **Exhibit #7** (2002 contract) as not being guaranteed savings to the School Board. We disagree and **Exhibit #5 and #7** displays how the annual stipulated savings were calculated for the 2002 contract and the Dorseyville amendment. **Exhibit #6 and #8** are spread sheets of costs and expenses that the School Board either completely eliminated or significantly reduced as a result of the 2002 contract or the Dorseyville amendment. The **Exhibit #5 and #7** costs and expenses are the "subjective evaluation" contemplated by the Attorney General in Opinion No. 99-280. The Attorney General in Opinion No. 99-280 recognized the fact that not all aspects of an energy efficiency contract are susceptible to objective evaluation (i.e. kilowatt hours of electricity consumed).

The acknowledgment by the Attorney General in Opinion No. 99-280 that energy efficiency contracts require subjective evaluation of some cost is the exact reason that guaranteed stipulated savings are a part of all such contracts. If energy efficiency contracts were only based on objective evaluations, no such contract would be financially feasible.

We believe that while energy savings amounts may be measured and verified by reviewing consumption amounts on the School Board's utility bills, it is impossible to measure and/or verify the amount of future operational savings achieved by the School Board under the performance-based energy efficiency contract and the amendment. This is because one can simply never know to a certainty the extent of the repairs and other operational issues that would have needed to have been addressed if we had never entered into the performance-based energy efficiency contract.

The Audit Report states that the School Board's payment obligation in 2004 and 2005 were not met and that the payment obligation will not be met under the amended contract. However, when the operational savings are included in the total guaranteed savings for the 2002 contract and the amendment, the debt service obligations are exceeded.

### Executive Summary #3

We concur with your finding that the management of the School Board has not maintained documentation supporting the calculation of the operational savings amounts stipulated in the performance-based energy efficiency contract and the amendment. We further concur with your recommendation that the management of the School Board request documentation from Siemens that supports the calculation of the annual operational savings as stipulated in the contract and in the addendum to the amendment. We have already requested and received this documentation from Siemens. We will further be requesting that SIEMENS provide:

1. Quarterly Reports in written format to every Board member, the Superintendent, and to a designated monitor.
2. Provide an annual oral presentation to the Board no later than August of each year, unless otherwise determined by the School Board, outlining the operational and energy savings
3. Financial reimbursement, as designated by the contract, should energy savings costs exceed that agreed upon in the contract agreement

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#### Executive Summary #4

We concur with your finding that the management of the School Board has failed to adequately implement checks and balances to monitor the reported results from the performance-based energy efficiency contract and the amendment.

We further investigated your findings that the management of the School Board did not receive the annual reimbursement/reconciliation reports for the 2004 and 2005 performance years within sixty (60) days of the anniversary of the Performance Commencement Date.

It was determined that Siemens provided the School Board with the 2004 and 2005 quarterly reports as required by the 2002 contract and submitted the 2004 yearly Reimbursement/Reconciliation report to the School Board. However, several School Board agenda postponements of the Siemens presentations to the School Board and the disruption caused by Hurricane Katrina resulted in no 2004 report being presented to the School Board. The 2004 written report is attached as **Exhibit #9**. The 2004 Reimbursement/Reconciliation calculates that the School Board did not achieve the guaranteed savings and that the contract energy saving were less than the School Board payment obligation by \$5,790.00. Attached as **Exhibit #10** is the 2003 Siemens Construction Period Report. The 2003 Executive Summary reports an energy reduction of \$62,796.00. The Executive Summary provided in **Exhibit #9** reports an energy reduction of \$207,837.00. Schedule F, Section 2.2.c page 48 entitled Calculation of Total Savings provides as follows:

(c) Any energy and operational costs avoided by the Customer resulting directly from any steps taken by Contractor in the Facility prior to the Acceptance Date will be added to the total savings and cost avoidance for the first Annual Savings Period.

Pursuant to Schedule F, Section 2.2.c of the 2002 contract, the 2003 construction energy savings of \$62,796.00 was added to the 2004 energy savings of \$207,837.00 for a total energy savings in 2004 of \$270,633.00. This amount exceeds the 2002 contract energy savings of \$213,627.00.

In March or April of 2006 the 2005 Reimbursement/Reconciliation report was presented to the School Board. The report calculates that the energy savings were more than the contract payments. The 2005 written report is attached as **Exhibit #11**.

In order to further comply with your findings we have hired a consultant (Mr. T-Joe Distefano) to oversee the SIEMENS project and monitor specifications, energy and operational savings. Mr. Distefano is a former employee who supervised our Maintenance Department and has over 40 years of experience in this area. We are

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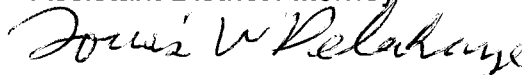
confident he will be able to provide the services required.

We do not concur with your finding that all contract deliverables were not received. Your basis for this conclusion seems to be that "Siemens is required to perform monthly energy audits and prepare quarterly reports on energy savings". Schedule J of the original contract contains a section entitled: ENERGY SAVINGS REPORTS. This section provides that Siemens "will prepare a Quarterly Report and an Annual Savings Report and Presentation to present savings measurement and verification information to support this agreement." We believe that this wording only requires Siemens to present such reports annually to the School Board, and we believe they have substantially complied with this requirement.

We concur substantially with the spirit of your recommendations resulting from the findings related to the monitoring and review of the contract and the amendment.

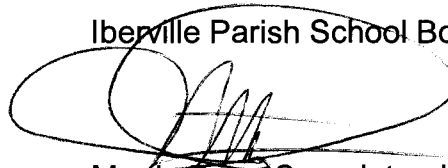
Sincerely,

Assistant District Attorney



Louis W. Delahaye

Iberville Parish School Board



Martin Bera, Superintendent

LWD/lwd  
Attachments